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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,103	07/22/2005	Hideo Takami	OGOSH35USA	4374
270	7590	04/17/2007	EXAMINER	
HOWSON AND HOWSON SUITE 210 501 OFFICE CENTER DRIVE FT WASHINGTON, PA 19034			ZHU, WEIPING	
			ART UNIT	PAPER NUMBER
			1742	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/17/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/543,103	TAKAMI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Weiping Zhu	1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 April 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,6 and 10-14 is/are pending in the application.  
 4a) Of the above claim(s) 6 and 10-14 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 4 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/30/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.

The application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.4999, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted

- I. Claims 1 and 4, drawn to a Ge-Cr alloy sputtering target,
- II. Claims 6 and 10-14, drawn to a manufacturing method of a Ge-Cr alloy sputtering target.

The inventions listed as I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the common technical feature in all groups is the Ge-Cr alloy sputtering target. This element cannot be a special technical feature under PCT Rules 13.2 because the element is shown in the prior art. JP 2002-352483 discloses a Ge-Cr alloy sputtering target containing 5-50 at% of Cr and having a relative density of 93-99% (abstract and Table 1 (orally translated by a USPTO translator)), which is substantially identical to the claimed Ge-Cr alloy sputtering target. Inventions I-II lack the same or corresponding special technical features. Therefore unity of invention is lacking and restriction is appropriate.

During a telephone conversation with Mr. William Bak on April 12, 2007 a provisional election was made without traverse to prosecute the invention of I, claims 1

and 4. Affirmation of this election must be made by the applicant in replying to this Office action. Claims 6 and 10-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should the applicant traverse on the ground that the inventions are not patentably distinct, the applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

The applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2002-352483.

With respect to claims 1 and 4, JP ('483) discloses a Ge-Cr alloy sputtering target containing 5-50 at.% of Cr and having a relative density of 93-99% (abstract and Table 1 (orally translated by a USPTO translator)). The content of Cr is the same as the claimed range and the relative density overlaps the claimed range. A prima facie case of obviousness exists. It would have been obvious to one of ordinary skill in the art to apply the claimed ranges within the disclosed ranges, because JP ('483) discloses the same utility in the entire disclosed range.

JP ('483) further discloses a process to produce the Ge-Cr alloy sputtering target comprising (paragraph [0013], machine translation) blending Ge powders of a mean particle size of 100 microns with the Cr powders of mean particles sizes of 100 or 50 microns; hot pressing the powder mixture under 24.5 MPa at 870<sup>0</sup> C for 3 or 4 hours; and finish machining the hot pressed sputtering target. The process of JP ('483) is identical or substantially identical to the process disclosed in the instant application.

JP ('483) does not disclose the density variation, the ratio B/A of the maximum peak intensity A of Ge phase in a 2θ range of 20<sup>0</sup> to 30<sup>0</sup> and of the maximum peak intensity B of GeCr compound phase in a 2θ range of 30<sup>0</sup> to 40<sup>0</sup> and the composition

variation in the target as claimed in the instant claims 1 and 4. However, it has been well held where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical process, a *prima facie* case of either anticipation or obviousness has been established.

In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977), MPEP 2112.01 [R-3] I. In the instant case, the Ge-Cr alloy sputtering target of JP ('483) is identical or substantially identical to that of the instant disclosure and both sputtering targets are produced by identical or substantially identical processes, therefore a *prima facie* case of obviousness exists. The same density variation; the same B/A ratio and the same composition variation would be expected in the Ge-Cr alloy sputtering target of JP ('483) as in the claimed Ge-Cr alloy sputtering target.

### ***Conclusion***

This Office action is made non-final. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WZ

4/13/2007

ROY KING  
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